

Date of decision: 13/12/95

Hon'ble MR.JUSTICE R.K.ABICHANDANI

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DY ENGINEER

MR NS SHETH	for Petitioner
MR TUSHAR MEHTA	for Respondent No. 1
MR RD DAVE	for Respondent No. 4

Coram : MR.JUSTICE R.K.ABICHANDANI

## ORAL JUDGEMENT

At the request of both the parties, the matter is taken up for final disposal

The grievance of the petitioner is that the respondent-Board has rejected the application dated 14th June 1995 of the petitioner-company for temporary connection on the ground that the dues of the previous consumer M/s. Nigam Wires Private Limited about Rs.2,00,811/- were not paid. The petitioner has prayed for a direction on the respondents for supply of electricity for their factory. The stand of the respondent-Board that the petitioner could be given electricity supply if the dues of the previous consumer were paid up, cannot be sustained, in view of the decision of the Honourable Supreme Court in the case of Isha Marbles vs. Bihar State Electricity Board & Another, reported in JT 1995 (2) SC. 626, in which the Supreme Court held that the auction purchaser cannot be saddled with the contractual liability of the original defaulter. It was held that though the auction purchaser had asked for electricity connection as a new connection, it cannot be regarded as a new connection and it was only a reconnection, since the premises had already been supplied with the electricity supply.

It was sought to be contended on behalf of the respondent-Board that the connection is a fresh connection. Such argument is not open in view of what has been stated by the Supreme Court in the case of Isha Marbles (supra) in paragraphs 48 and 56 of the judgment. The Supreme Court has categorically held that, though the purchaser asked for electricity connection as a new connection, it cannot be regarded as a new connection, in view of the fact that the electricity was already supplied in the same premises and such connection was a reconnection of electricity. It was held by the Supreme Court that:

"It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of th...

when they fall due or not providing itself by adequate deposits."

Therefore, there is no scope of arguing that the electricity supply which was to be given in the same premises taken in public auction by the petitioner would amount to reconnection.

It was further submitted that the observations of the Supreme Court in this paragraph are only obiter since the court was not called upon to adjudicate on such an issue. The observations are made in the context of the controversy which did arise before the Supreme Court and cannot be termed as obiter. Even if they were obiter, they are binding on this Court, since they amount to declaration on the point of law.

In view of the decision of the Supreme Court in the case of Isha Marbles (supra), the respondents-authorities cannot insist on the petitioner that they should pay up the dues of the earlier consumer, who was supplied electricity in the same premises.

The respondents-authorities are, therefore, directed to decide the question of giving reconnection to the petitioner for the electricity supply in light of the decision in the case of Isha Marbles (supra), without taking into consideration the fact that the dues of the previous consumer were not paid. The decision may be taken within three weeks from today.

Rule is made absolute to the aforesaid extent with no order as to costs.

MR.JUSTICE R.K.ABICHANDANI